

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL BELL,

Plaintiff,

v.

FISHING COMPANY OF ALASKA, et al.,

Defendants.

CASE NO. C06-195RSM

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT

Plaintiff Michael Bell filed this complaint pursuant to the Jones Act, 46 U.S.C. § 688, seeking damages for injuries he received while working in defendant's employ. The matter is now before the Court for consideration of defendant Fishing Company of Alaska's motion for partial summary judgment on the issues of negligence and unseaworthiness. Dkt. # 19. Plaintiff has opposed the motion. For the reasons set forth below, the defendant's motion shall be granted.

FACTUAL BACKGROUND

Plaintiff worked in the fish processing area of the F/V *Alaska Ranger*. On April 5, 2005, plaintiff slipped as he was descending the stairs¹ leading from the crew living quarters down to the galley area. The stairway leads toward the rear of the boat, so that as a person descends the stairs, his right side is toward the port side of the boat. The steps are metal with a perforated or grated tread, and a

¹The ship's stairs are often called a "ladder" in seamen's terminology. The terms "stairs" and "ladder" are used interchangeably throughout the documents filed in this case.

1 rounded front edge. They are twenty-four inches wide, and each step is approximately ten inches in
2 depth. The rise is nine and a half inches. There is a railing running the length of the starboard side,
3 attached to the bulkhead. The port side is open, but there is a structural post at the bottom, as well as a
4 ring or flange fifteen to twenty inches deep around the opening where the stairs pass through the floor.
5 Near the bottom of the stairs, in the far left corner of the landing area, is a garbage can for galley refuse.
6 The garbage can is secured to the wall with a “bungee” cord, and does not obstruct access to the stairs.
7 Deposition of Captain Jeffrey Parker, pp. 13-19; Deposition of Michael Bell, p. 63; Declaration of John
8 Douglas Dixon, ¶ 6.

9 Plaintiff states in his deposition that during his employment on the F/V *Alaska Ranger* he
10 descended these stairs numerous times, with his left hand on the railing and his right hand against the
11 metal ring (as he described it) which lines the opening of the hatch. Deposition of Michael Bell, p. 63-64.
12 This was consistent with the “one hand for the boat” rule. *Id.* at 68. On April 5, 2005, he descended the
13 stairs as usual, with one hand on the rail and the other on the “metal part” opposite. *Id.* at 76-77. As he
14 neared the bottom, his right foot encountered too much traction on the stair tread, and his left foot
15 slipped from the edge of the fourth or fifth step (counting up from the bottom) to the deck, causing him
16 to “do the splits”. Deposition of Michael Bell, p. 58-65. Plaintiff’s foot slipped because the heel of his
17 left foot contacted the edge of the stairstep, and then his foot skipped down across the edges of the three
18 or four remaining steps. *Id.*, p. 67, 69. Plaintiff was not certain if his head was below the lower edge of
19 the barrier around the opening of the floor above at this time.² *Id.* at 67. Fearful of hitting the garbage
20 can on the left, he reached to his right to grab the support pole, letting go of the handrail on his left side.
21 *Id.* After missing the last few steps, plaintiff’s left foot landed on the deck, twisting his knee. *Id.* at 59.

22 Plaintiff alleges that in this fall he injured his back and knee,³ and strained his groin. He claims
23 that his injuries were caused by the lack of a handrail on the right side of the stairway, as well as the
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25 ² When asked whether his head was “down through the opening”, plaintiff responded, “I have
26 cleared—I cleared the opening in the floor. Or it was—I mean, I could see daylight. **I don’t know how
high my head,** you know, eye level.” Deposition of Michael Bell, p. 67 (emphasis added).

27 ³The complaint states that he injured his right knee, but in his deposition plaintiff states that he
28 injured his left knee. Complaint, ¶ 4; Deposition of Michael Bell, p. 77.

1 presence of the garbage can at the bottom. Defendant has moved for summary judgment on the basis that
2 neither of these conditions constitutes negligence under the Jones Act, nor an unseaworthy condition.
3 The facts surrounding the condition of the stairs and stairwell are not in dispute, and the matter is capable
4 of resolution by summary judgment.

6 DISCUSSION

7 Summary judgment is proper only if "the pleadings, depositions, answers to interrogatories, and
8 admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any
9 material fact and that the moving party is entitled to judgment as a matter of law." F.R.Civ. P. 56(c).
10 The moving party has the burden of demonstrating the absence of a genuine issue of fact for trial by
11 "identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on
12 file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of
13 material fact." *Celotrex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party satisfies this
14 burden, the opponent must set forth specific facts showing that there remains a genuine issue for trial.
15 F.R.Civ. P. 56(e).

16 A dispute about a material fact is genuine "if the evidence is such that a reasonable jury could
17 return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).
18 If the evidence is merely colorable or is not significantly probative, summary judgment may not be
19 granted. *Id.* at 249-50. It is not the court's function at the summary judgment stage to determine
20 credibility or to decide the truth of the matter. *Id.* Rather, "the evidence of the non-movant is to be
21 believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255.

22 Plaintiff filed this suit pursuant to the Jones Act, 46 U.S.C. § 688, and general maritime law. The
23 Court has jurisdiction of the matter pursuant to 28 U.S.C. § 1331. Venue is proper in this district due to
24 defendants' presence here.

25 The Jones Act provides that "any seaman who shall suffer personal injury in the course of his
26 employment may . . . maintain an action for damages at law, . . . and in such action all statutes of the
27 United States modifying or extending the common-law right or remedy in cases of personal injury to
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1 railway employees shall apply. . . .” 46 U.S.C. § 688. Plaintiff was a seaman within the meaning of the
2 Jones Act on April 5, 2005.

3 In order to prevail on his negligence claim under the Jones Act, plaintiff has the burden of
4 proving, by a preponderance of the evidence, that the defendant was negligent, and that such negligence
5 was the cause of injury to the plaintiff. Negligence is a cause of an injury if it played any part, no matter
6 how small, in bringing about the injury, even if the negligence operated in combination with some other
7 cause. *In re Hechinger*, 890 F. 2d 202, 208 (9th Cir. 1989); *cert. denied*, 498 U.S. 848 (1990); *Ribitzki*
8 *v. Canmar Reading & Bates, Ltd. Partnership*, 111 F. 3d 658, 662 (9th Cir. 1997). However, the mere
9 occurrence of an injury is not alone sufficient to create liability. The plaintiff must show that the
10 employer’s conduct fell below the required standard of care. *Gautreaux v. Scurlock Marine, Inc.*, 107 F.
11 3d 331, 335 (5th Cir. 1997) (*en banc*).

12 In order to prevail on his claim of unseaworthiness under the Jones Act, plaintiff has the burden of
13 proving by a preponderance of the evidence that the F/V *Alaska Ranger* was unseaworthy, and that the
14 unseaworthy condition was a cause of the injury to plaintiff. A vessel is seaworthy if the vessel and its
15 parts and equipment are reasonably fit for their intended purpose, and operated by a crew which is
16 reasonably adequate and competent for the work assigned. Conversely, the vessel is unseaworthy if the
17 vessel or any of its equipment is not reasonably fit for its intended purpose, or if its crew is not reasonably
18 adequate or competent to perform the work assigned. *Ribitzki*, 111 F. 3d at 664. Unseaworthiness is a
19 cause of injury if it played a substantial part in bringing about injury to the plaintiff. *Ribitzki*, 111 F. 3d at
20 665.

21 A vessel owner has a duty to provide adequate safety equipment for the vessel. However, the
22 vessel owner is not required to furnish an accident-free ship. The vessel owner is not required to have the
23 best parts and equipment, nor the finest of crews; it is required to have what is reasonably proper and
24 suitable for its intended use. *Mitchell v. Trawler Racer*, 362 U.S. 539, 550 (1960); *Lee v. Pacific Far*
25 *East Line*, 566 F. 2d 65, 67 (9th Cir. 1977).

26 Defendant has moved for summary judgment on the basis that there are no facts in dispute
27 regarding the condition of the stairwell: the treads were made of grated, non-slip metal; there was a
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1 handrail on one side; and there was no foreign substance on the stairs, nor any failure of the ship's
2 equipment, that caused plaintiff's slip and fall. Plaintiff, in opposing summary judgment, asserts that

3 plaintiff's negligence claim is predicated on the **undisputed** fact that the stairwell down
4 which Plaintiff fell and sustained his injuries did not have a second adequate handrail to
5 grasp onto, steady himself and prevent falling the rest of the way down the steps, and that
6 an obstruction was placed at the bottom of the steps [garbage can at the "landing"] which
7 prevented Plaintiff from landing squarely thus mitigating the physical effects of the fall.
8 The fact finder is charged with determining whether those facts as alleged—i.e., existence
9 of the second ["outboard"] hand rail—would have allowed Plaintiff to grasp onto it and
10 stabilize himself, thus preventing him from falling completely down the steps and sustaining
11 the injury, and whether the absence of same constituted the failure to exercise reasonable
12 care under the circumstances for the safety of a crewmember and/or a defective—hence
13 unseaworthy—condition. In addition, the fact finder may deduce that the existence of the garbage
14 can at the base of the steps constituted an unreasonably dangerous obstruction
15 which prevented Plaintiff from landing squarely, thus reducing the severity of the injury
16 and constituted an unseaworthy condition and/or a breach of defendant's duty to provided
17 [sic] Plaintiff with a safe place in which to work and failure to exercise reasonable care
18 under the circumstances for the safety of the crewmember.

11 Plaintiff's Response, p. 3 (emphasis in original).

12 It is thus plaintiff's contention that defendants were negligent in failing to provide handrails on
13 both sides of the stairway, and in allowing a garbage can to be secured near the bottom of the stairs.
14 When asked by defendants to provide evidence of the applicable standard of care to support the claim of
15 negligence, plaintiff responded in a letter as follows:

16 In regards to ocean regulations, as you know, government regulations may be applied to
17 set the standard of care, even if they are not made applicable for purposes of establishing
18 negligence per se. We maintain that regulations including, but not limited to, the following
19 provide the standard of care: 46 CFR § 72.05-20; CFR § 1910.24; American Bureau of
20 Shipping, § 5.1, 1.4(a); 2001 ASTM Standards for Ships and Marine Technology, § 31.8.4.
21 Other regulations may be disclosed during the course of discovery and we will supplement
22 same.

21 Dkt. # 2, Exhibit 5.

22 In supporting the motion for summary judgment, defendants have provided the declaration of
23 expert John Douglas Dixon, a naval architect and marine engineer. Mr. Dixon inspected the F/V *Alaska*
24 *Ranger* on August 20, 2006. He measured the ladder (stairway), viewed its situation, and inspected the
25 stair treads. His declaration states, in relevant part,

26 6. The ladder involved in this case is 24 inches wide, tread spacing is near even at
27 approximately 9 ½ inches, and there is one handrail. The ladder was found in good
28 condition and walking surfaces were well maintained and clean, minimizing any slipping

1 or tripping hazards.

2 7. I measured the ladder tread slip resistance of the fifth step from the bottom in three
3 directions. Based on measured slip indexes and the industry and government safe standard
4 slip index of 0.5, there is no reason to believe the ladder was either a slipping or tripping
5 hazard or contributed to any un-seaworthy condition. The ladder tread was safe as designed
6 and maintained and would not have caused the alleged accident. This type and condition
7 of expanded metal diamond pattern steel with serrated edges is the industry standard for
8 ladder treads, providing good traction in wet conditions and not a tripping hazard when dry.

9 9. The ALASKA RANGER was in full compliance with all regulations as they apply to the
10 area of the vessel as observed. The vessel was seaworthy and properly designed for its
11 intended purpose of fishing in the open ocean in rough seas. The vessel was maintained in
12 and operated in a safe manor with respect to slip and fall hazards on ladders.

13 10. 46 CFR §§ 72.05 - 20 provide regulations for inspected passenger vessels. They do
14 not apply to this vessel. Even using these regulations for guidance would be improper
15 because passenger vessel arrangements are not compatible with the operating profile of
16 fishing. There are no structural fire protection zones required on a vessel of this type,
17 and no crew make one-time trip passages. Protection and evacuation arrangements to
18 accommodate all ages, sizes, and numbers of people onboard are not necessary.

19 11. American Bureau of Shipping §§ 5.1 and 1.4(a) do not exist. The plaintiff may be
20 referring to § 5.5.14. This section, however, provides no guidelines [sic] for ladders or
21 stairs.

22 12. ASTM 2001 § 31.8.1.4 does exist, and the stairwell meets its recommendations.
23 The specification only recommends dual handrails if the stairwell is enclosed on both
24 sides and is more than 44 inches wide. The ladder is also in general accordance with
25 voluntary ASTM F25 Ships and Marine Technology Standards F 1437 for inclined
26 type I ladders.

27 13. 46 CFR § 1910.24 does not exist. The Plaintiff is probably referring to OSHA
28 regulation 29 sCFR § 1910.24, which does not apply because the vessel was outside
OSHA jurisdiction when this alleged incident occurred. If this regulation did apply, the
ladder is in compliance.

Declaration of John Douglas Dixon, Dkt. # 21.

Plaintiff has provided no evidence whatsoever, by way of an expert declaration or otherwise, to
controvert this expert declaration that the stairway in question is fully compliant with all applicable
standards, and does not present a slipping or tripping hazard. Instead, plaintiff offers only his lay opinion
that the standard of care should be determined by the Occupation and Health and Safety Act ("OSHA")
standards. He provides no expert declaration in support of his contention, but points to several cases
from this district for the proposition that "OSHA regulations provide **strong** evidence of the standard of
care required by Foss on its uninspected vessels after 1984". Plaintiff's Response, p. 5, citing *McCoy v.*

1 *Foss Maritime, Inc.*, 442 F. Supp. 2d 1103 (W.D.Wash. 2006) and *Montaperto v. Foss Maritime*
 2 *Company*, 2000 WL 33389209 (W.D.Wash. 2000) (not reported in the Federal Supplement 2d).
 3 However, these cases address the applicability of OSHA standards regarding noise exposure, not
 4 stairways. *McCoy*, 442 F. Supp. 2d at 1107-1110. Plaintiff has provided no evidence whatsoever that
 5 OSHA standards govern the standard of care for stairways on fishing vessels, nor that the F/V *Alaska*
 6 *Ranger* was an “uninspected vessel” within the meaning of the Court’s statement in *McCoy* and
 7 *Montaperto*. Further, plaintiff has provided no expert opinion to controvert Mr. Dixon’s statement that
 8 the stairway is in full compliance with ASTM standards, and that should the OSHA regulation apply to
 9 this stairway, it is in compliance with that standard as well.⁴ Declaration of John Dixon, ¶¶ 12, 13.
 10 Plaintiff has thus offered no evidence to controvert defendant’s evidence that the single railing on the
 11 stairway is consistent with the applicable standard of care, and that it does not constitute either
 12 negligence or an unseaworthy condition.

13 As to the presence of the garbage can, plaintiff has produced no evidence that the can “prevented
 14 Plaintiff from landing squarely” as he asserts. Plaintiff’s Response, p. 3. In his deposition testimony,
 15 plaintiff stated only that he “didn’t want to end up in the garbage can.” Deposition of Michael Bell, p. 66.
 16 For this reason, he let go of the railing and reached to the right, toward the post, so that he “didn’t end up
 17 going head first into the waste.” *Id.* at 67. Yet he landed on the deck on his left foot, and at no time
 18 contacted the garbage can. *Id.* at 59. This testimony by plaintiff belies his claim that the presence of the
 19 garbage caused his injury, or contributed to it. He has thus produced no evidence of negligence or an
 20 unseaworthy condition to support denial of defendant’s motion for summary judgment.

21 CONCLUSION

22 The mere occurrence of an injury is not alone sufficient to create liability; a plaintiff must show
 23 that the employer’s conduct fell below the required standard of care. *Gautreaux v. Scurlock Marine*,

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 25 ⁴ The OSHA standard cited by plaintiff requires handrails on one side of closed stairways, and on
 26 “the open sides of all exposed stairways and stair platforms.” 29 CFR § 1910.24(h). Plaintiff has
 27 provided no evidence that this stairway, with the hatch opening barrier extending partway down the
 28 length and providing a handhold on the port side, is an “exposed” stairway within the meaning of this
 regulation. Declaration of Dixon, ¶ 13.

1 *Inc.*, 107 F. 3d at 335. Nor is the vessel owner required to furnish an accident-free ship. The vessel
2 owner is not required to have the best parts and equipment, but rather it is required to have what is
3 reasonably proper and suitable for its intended use. *Mitchell v. Trawler Racer*, 362 U.S. at 550; *Lee v.*
4 *Pacific Far East Line*, 566 F. 2d at 67. Here, the uncontroverted testimony of defendant's expert
5 establishes that the stairs and railing complied with all applicable standards, and presented no slipping or
6 tripping hazard. Plaintiff's own deposition testimony establishes that his slip and fall was caused by a
7 misstep, in which his heel was placed on the edge of the step rather than on the main tread of the step.
8 While this misplacement of his foot caused him to "do the splits", he still landed on his left foot. His
9 claim that a second handrail would have prevented injury is based solely on his own conclusory opinion,
10 not on any actual evidence. He has failed to demonstrate through competent evidence that defendant's
11 conduct in providing one handrail fell below the standard of care.

12 As plaintiff has come forward with no actual evidence to demonstrate either negligence on
13 defendant's part, or unseaworthiness of the vessel, defendant is entitled to summary judgment on these
14 two claims. Defendant's motion for partial summary judgment is accordingly GRANTED.

15 Dated this 1 day of May 2007.

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17 RICARDO S. MARTINEZ
18 UNITED STATES DISTRICT JUDGE
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